

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On April 4, 2019 appellant, then a 59-year-old advanced medical services assistant, filed an occupational disease claim (Form CA-2) alleging that she developed carpal tunnel syndrome due to factors of her federal employment, including prolonged typing. She noted that she first became aware of her condition and its relation to her federal employment on November 12, 2018.

In support of her claim, appellant submitted a medical report dated November 12, 2018 from Dr. Bezarel M. Banadda, a Board-certified internist, who diagnosed pain in the left and right hands. OWCP also received a partially illegible note from a medical facility, dated December 13, 2018, which noted that the patient had bilateral severe carpal tunnel syndrome.

In a development letter dated May 30, 2019, OWCP informed appellant that additional medical and factual evidence was necessary to establish her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. By separate development letter of even date, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor regarding appellant's allegations. It afforded both parties 30 days to respond.

By decision dated July 24, 2019, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish factors of her federal employment. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On July 29, 2019 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on October 23, 2019. During the telephonic hearing, she alleged that she held three different clerk/typist jobs during the 37 years of her federal employment, all of which required her to type and use a computer and mouse. The hearing representative afforded appellant 30 days to submit additional evidence.

In a medical report dated November 11, 2019, Dr. Meredith N. Osterman, a Board-certified hand and orthopedic surgeon, reviewed appellant's electromyography (EMG) test and diagnosed severe bilateral carpal tunnel syndrome.

OWCP also received reports dated November 13 and December 13, 2018 from Dr. Osterman in which she related that appellant experienced numbness, tingling, and burning at the tip of her fingers for the past 11 months. Dr. Osterman diagnosed bilateral carpal tunnel syndrome.

By decision dated December 5, 2019, a hearing representative modified OWCP's July 24, 2019 decision to find that appellant had established the alleged factors of her federal employment, but denied the claim as causal relationship had not been established.

On July 20, 2020 appellant, through counsel, requested reconsideration of OWCP's December 5, 2019 decision. Counsel noted that he was enclosing a copy of a June 30, 2020 narrative report from Dr. Osterman. However, no additional medical evidence was received.

By decision dated December 17, 2020, OWCP denied appellant's request for reconsideration of the merits of her claim.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his or her own motion or on application.³

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁴

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁵ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁶ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.⁷

ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

³ *Id.* at § 8128(a); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

⁴ 20 C.F.R. § 10.606(b)(3); *see L.D., id.*; *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁵ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

⁶ *Id.* at § 10.608(a); *see also A.F.*, Docket No. 19-1832 (issued July 21, 2020); *M.S.*, 59 ECAB 231 (2007).

⁷ *Id.* at § 10.608(b); *J.B.*, Docket No. 20-0145 (issued September 8, 2020); *Y.K.*, Docket No. 18-1167 (issued April 2, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

Appellant has not alleged or demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, appellant has not advanced a relevant legal argument not previously considered. Consequently, she is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).⁸

The Board further finds that appellant has not provided any relevant and pertinent new evidence not previously considered. Although appellant's counsel stated that a narrative report from Dr. Osterman was enclosed with the reconsideration request, OWCP did not receive any additional evidence. As appellant did not provide relevant and pertinent new evidence, she is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).⁹

The Board, accordingly, finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.¹⁰

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

⁸ *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

⁹ *See T.W.*, Docket No. 18-0821 (issued January 13, 2020).

¹⁰ *J.B.*, *supra* note 7; *D.G.*, Docket No. 19-1348 (issued December 2, 2019).

ORDER

IT IS HEREBY ORDERED THAT the December 17, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 20, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board